IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 623 of 1986
With
FIRST APPEAL No. 624 of 1986

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANCHHIBEN D/O MANGAJI HIRAJI - Appellant(s)
Versus
BHAGWANBHAI PARSHOTTAMDAS PATEL - Defendant(s)

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Appearance :
MR SANJAY M AMIN for Appellant(s) : 1,MR AJ PANDYA for Appellant(s) : 1,
MR PV NANAVATI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/08/2006

COMMON ORAL JUDGMENT

1.Both these appeals are arising out of the common judgment and decree passed by the learned City Civil Court, Ahmedabad, arising out of Civil Suit Nos.984 of

1981 and 649 of 1983 and therefore, they are being disposed of by this common judgment and order.

2. By way of these appeals, the appellants have challenged the judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 23rd September, 1985 passed in Civil Suit No.984 of 1981 with Civil Suit No.649 of 1983 by which, the learned trial Court has decreed the Civil Suit No.649 of 1983 and dismissed the Civil Suit No.984 of 1981.

3. The Civil Suit No.984 of 1981 was filed by the appellant herein for the relief of declaration that the defendant – respondent herein has no right, title or interest in the suit land and for permanent injunction restraining the defendant from interfering with the plaintiff's possession of the suit land and from making any construction thereon.

4. The Civil Suit No. 649 of 1983, which can be said to be a counter suit, was filed by the respondent herein, one of the defendant of Civil Suit No. 984 of 1981 for obtaining the relief of permanent injunction restraining the appellants herein (plaintiffs of Civil

Suit No. 984 of 1981) from disturbing their possession of the suit land, in any manner and from ousting them from the suit land.

5. The dispute is with regard to the land bearing Survey No. 111 (Hissa No.1/11) situated at Village Acher, Taluka City, Ahmedabad. In view of some consensus between the parties for disposal of the present appeals, this Court is not discussing the entire facts and it appears from the record, more particularly, Para-21 of the judgment and decree under challenge that both the sides submitted before the learned trial Court that the title of the parties to the suit land is not to be decided and it has to be incidentally referred to for the purpose of deciding the question as to who was in possession of the suit land on the date of the First Suit i.e. on 16th April, 1981. The learned advocates appearing on behalf of both the sides have taken this Court to the final direction issued by the learned trial Court and the recommendations of the learned trial Court by which, the government authorities, appropriate authority or the local authority were recommended to take up the question pending before them with regard to the suit plot of the land expeditiously.

The learned advocates appearing on behalf of both the sides have submitted that the dispute is at present pending before the City Survey Inquiry Officer, Ahmedabad, and the inquiry with regard to the disputed property in question is going on and that the controversy in the aforesaid suits be treated only for the purpose of possession and the question with regard to title be kept open to be agitated before the appropriate forum. Considering the above and even otherwise, the finding of the learned trial Court that the plaintiffs' of Civil Suit No. 649 of 1983 were found to be in possession on the date on which the Civil Suit No. 984 of 1981 was filed and for the reasons stated in the said judgment and order and agreeing with the same, the finding given by the learned trial Court with regard to possession of the respondents is hereby confirmed. However, as stated above and as submitted by the learned advocates appearing on behalf of the parties, the said finding of possession be treated for the purpose of possession only and the question with regard to title of the disputed land is kept open and therefore, it is clarified that this Court has not expressed any opinion with regard to the title in favour of either parties

and any observation of the learned trial Court as well as of this Court referring to title be considered for the purpose of possession only and it will be open for the parties to agitate the dispute with regard to title before the appropriate forum and it is reported that the dispute is pending before the City Survey Inquiry Officer, Ahmedabad.

6. It is requested by the learned advocates appearing on behalf of the parties that direction be issued to the City Survey Inquiry Officer, Ahmedabad, to decide and dispose of the inquiry pending before it with regard to the disputed suit property as early as possible as even the remand order was passed by the City Deputy Collector, Ahmedabad, directing the City Survey Superintendent – 1, Ahmedabad, to take a fresh decision after holding an inquiry afresh in the year 2004, more particularly, by order dated 10th November, 2004. Under the circumstances, the City Survey Superintendent – 1, Ahmedabad, before whom the inquiry is pending and/or any of the Officer before whom the inquiry is pending with regard to the disputed suit property is hereby directed to complete the inquiry and to decide and dispose of and to conclude the proceedings with regard

to the suit property as early as possible preferably within a period of 6 months from the date of receipt of this order.

7.With these, both the appeals are dismissed. Ad-interim relief, if any, stands vacated forthwith. However, there shall be no order as to costs.

Direct Service permitted.

[M.R.SHAH, J.]

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